

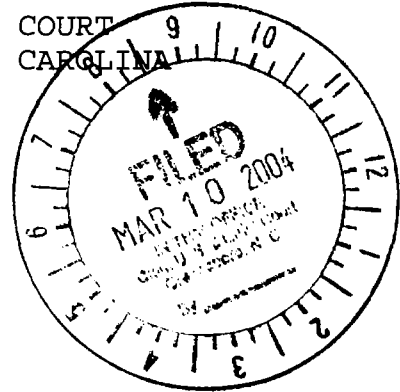
ENTERED ON DOCKET
R. 79 (a)

S/khm

MAR 10 2004

412. khm

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



MCI CONSTRUCTORS, INC.,
a Delaware corporation,

Plaintiff,

v.

HAZEN AND SAWYER, P.C.,
a New York corporation,
CITY OF GREENSBORO, a
municipality organized under
the laws of the State of
North Carolina,

Defendants.

1:99CV00002
(CONSOLIDATED)

* * * * *

MCI CONSTRUCTORS, LLC,
a Delaware corporation,

Plaintiff,

v.

CITY OF GREENSBORO, a
municipality organized under
the laws of the State of
North Carolina,
HAZEN AND SAWYER, P.C.,
a New York corporation,

Defendants.

1:02CV00396

* * * * *

JUDGMENT and ORDER

In preparation for trial, Plaintiff MCI Constructors, LLC, f/k/a MCI Constructors, Inc. ("MCI"), submitted MCI's Summary of its Offers of Proof and a Memorandum of Specific Evidence in Support of Plaintiff's Offers of Proof. Both of these documents proffered evidence attempting to show the City Manager's decision was tainted by fraud, bad faith, or gross mistake necessarily implying fraud or bad faith. Defendant City of Greensboro ("the City") responded by submitting motions in limine to exclude the evidence put forth by MCI.

On January 21, 2004, the first day scheduled for trial in this matter, the court heard from MCI and the City regarding the enforceability of determinations made during the City Manager's liability and damage hearings. The City argued that MCI could not prevail on its evidence because it was not admissible. The court has considered the City's motions and argument as a request for judgment as a matter of law pursuant to Rule 50 of the Federal Rules of Civil Procedure.

After reviewing Plaintiff's evidence, the court finds that there is no legally sufficient evidentiary basis for a reasonable jury to find that the City Manager's decision was influenced by fraud, bad faith, or gross mistake. Therefore, because the City Manager's award is a complete defense to Plaintiff's claims, judgment will be granted for the City on all of MCI's claims

against the City. Furthermore, having found the City Manager's award binding and enforceable, the Court awards judgment to the City on its first counterclaim.

In granting judgment on Plaintiff's claims, the court is mindful of its opinion dated March 24, 2000, wherein the court did not require submission to the City Manager of the claims for breach of warranty and negligent misrepresentation. MCI Constructors, LLC v. Hazen & Sawyer, P.C., No. 1:99CV00002, slip op. at 15 (M.D.N.C. Mar. 24, 2000). After further consideration and the presentation of additional evidence, the court now finds that such claims were within the ambit of the City Manager's contractual decision-making authority. Such a determination leaves MCI with no further viable claims.

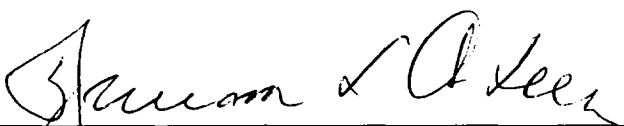
For the reasons set forth herein,

IT IS ORDERED AND ADJUDGED that the City's motion for judgment as a matter of law is granted on all of MCI's claims against the City in this action;

IT IS FURTHER ORDERED that the City recover from MCI the sum of \$13,377,842.73, plus interest from February 5, 2003, the date of the damages awarded by the City Manager;

IT IS FURTHER ORDERED that this judgment shall be a final judgment resolving all issues as between the City and MCI.

This the 10 day of March 2004.


United States District Judge